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ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE
FIELD OF HUMAN RIGHTS

Situation of human rights in Cambodia

Report of the Special Representative of the Secretary-General for
Human Rights in Cambodia, Mr. Thomas Hammarberg, submitted in
accordance with Commission resolution 1998/60

Report of the Secretary-General

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Introduction

1. In its resolution 1998/60, the Commission on Human Rights requested the Secretary-General to report to the Commission at its fifty-fifth session on the recommendations made by the Special Representative on matters within his mandate. The present report is submitted pursuant to that request and is based on the eleventh and twelfth missions of the Special Representative undertaken in October 1998 and January 1999. Like previous reports, it includes civil, cultural, economic, political and social rights. It was finalized in mid-February 1999.

2. The Special Representative of the Secretary-General for Human Rights in Cambodia, Thomas Hammarberg, has undertaken 12 official missions to Cambodia since he assumed the functions of Special Representative in May 1996. He has reported to the Commission on Human Rights (E/CN.4/1997/85, E/CN.4/1998/95) and the General Assembly (A/51/453, annex; A/52/489, annex; A/53/400, annex).

3. Since the fifty-fourth session of the Commission on Human Rights in April 1998, the General Assembly adopted resolution 53/135 on the situation of human rights in Cambodia in which it requested the Secretary-General, through his Special Representative, to assist the Government in ensuring the protection of the human rights of all people in Cambodia. Also in resolution 53/135, the General Assembly took note with appreciation of the report of the Special Representative (A/53/400, annex) and welcomed the holding of national elections. The Assembly endorsed the comments of the Special Representative that the most serious human rights violations in Cambodia in recent history had been committed by the Khmer Rouge, and noted with concern that no Khmer Rouge leaders had been brought to account for their crimes. The Assembly further welcomed the appointment by the Secretary-General, in response to the request by the Cambodian authorities for assistance in responding to past serious violations of Cambodian and international law by the Khmer Rouge, of a group of experts to evaluate the existing evidence and to propose further measures as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability.

I. ELEVENTH AND TWELFTH MISSIONS OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS IN CAMBODIA

A. Eleventh mission (23-30 October 1998)

4. The Special Representative met with His Majesty King Norodom Sihanouk; Chea Sim, President of the outgoing National Assembly and President of the Cambodian People's Party (CPP); and representatives of the Government, including Second Prime Minister Hun Sen, Co-Minister of the Interior Sar Kheng, and members of the governmental Cambodian Human Rights Committee. He also met with the Chief of General Staff of the Royal Cambodian Armed Forces, Ke Kim Yan. He held meetings with Prince Ranariddh in Bangkok and other leaders of the National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC) in Cambodia. He talked with representatives of non-governmental organizations, the diplomatic community, the United Nations, and the International Committee of the Red Cross (ICRC). The Special Representative participated in a regular meeting of the

United Nations heads of missions of agencies present in Cambodia, where he gave a briefing on his mission. He briefed several European ambassadors in Bangkok.

5. With regard to the question of bringing Khmer Rouge leaders to justice, the Special Representative at each meeting recalled the June 1997 letter from the co-Prime Ministers requesting assistance from the United Nations (see annex), and provided information about the Secretary-General's appointment of a group of experts and a brief introduction to the members of the group. He reported on the preparatory work which had been done by the group regarding their upcoming visit to Cambodia. The Special Representative explained that the mandate of the group was to evaluate the nature of existing evidence and to listen to the views of the Cambodian leaders and people before making recommendations to the Secretary-General. The Special Representative emphasized in particular that this effort was in response to the request of the Government and was intended to be of service to Cambodia. He pointed out that it was only a preliminary step in a process, not part of any eventual judicial proceedings.

6. The Special Representative received reconfirmation of continued support from all concerned. The King, who explained that he would be away for medical treatment during the visit of the group of experts in November 1998, requested the Special Representative to convey his views and his support. Hun Sen reiterated his intention to cooperate fully and expressed his appreciation at seeing this initiative begin to move forward after nearly 20 years. Prince Ranariddh and Chea Sim also expressed their support to the Special Representative. The governmental Cambodian Human Rights Committee was appointed the focal point to facilitate the meetings of the group with senior government officials.

7. The Special Representative met with several ambassadors, including those of China, the United States, Australia, France, Thailand and Viet Nam. With the Ambassador of Thailand he discussed arrangements for meetings of the group in Bangkok with the Ministry of Foreign Affairs, which were to take place at the end of the group's visit to Cambodia. The Ambassador pointed out that Thailand had a clear policy of cooperation in this regard.

8. The Special Representative again visited the Documentation Centre of Cambodia. He discussed with the Director of the Centre preparatory work for the visit of the group.

9. The Special Representative raised the issue of investigations in the cases reported to the Government, including the March 1997 grenade attack and the July 1997 killings. It was agreed that the Special Representative would meet with the Cambodian Human Rights Committee during his next mission to review progress on these cases. The Special Representative was requested to assist the Government through the provision of international expertise in reviewing the Cambodian system of justice and in improving criminal investigation methodology, as recommended in the April 1998 report of the two experts on criminal investigation. During the mission, the Special Representative released the seventh and last report on monitoring of election-related intimidation and violence.

10. The Special Representative was concerned about the strong sentiment of racial hatred against ethnic Vietnamese as demonstrated in the recent killings of four ethnic Vietnamese. In his meeting with opposition leaders, the Special Representative expressed his deep concern about the anti-Vietnamese remarks made during the election campaign and subsequently. The Special Representative held meetings with the Vietnamese Ambassador and the Vietnamese Association and requested the compilation of further factual information on the problems faced by ethnic Vietnamese.

B. Twelfth mission (9-21 January 1999)

11. The Special Representative met with senior representatives of the newly formed Government, including the Prime Minister, Hun Sen; the Minister of Foreign Affairs, Hor Nam Hong; the co-Ministers of Defence, Tea Banh and Prince Sirirath; the co-Ministers of the Interior, Sar Kheng and You Hockry; the Minister of Justice, Uk Vithun; the Minister for Women's and Veteran's Affairs, Mu Sochua; the Minister of Environment, Mok Mareth; the Secretary of State for Education, Pok Than; and the members of the governmental Cambodian Human Rights Committee. He also met with the President of the National Assembly, Prince Ranariddh; members of the National Assembly Commission on Human Rights and Receipt of Complaints; and the opposition leader, Sam Rainsy. He had several meetings with representatives of non-governmental organizations working on human rights. The Special Representative gave a briefing to the diplomatic corps and held a press conference with the local and international media. He had discussions with representatives of the United Nations in Cambodia, including the Secretary-General's Personal Representative, the United Nations Resident Coordinator and the staff of the Cambodia office of the High Commissioner for Human Rights (COHCHR).

12. From 10 to 14 January, the Special Representative visited the highland province of Ratanakiri where he focused on the economic, social and cultural rights of the indigenous peoples, in particular the human rights aspects of logging and land issues. He visited the provincial hospital, a primary school and several villages. He held discussions with Bou Tong, the member for Ratanakiri in the National Assembly, the Governor, Kep Chuktema, and provincial authorities from various sectors. He also met with staff of UNDP/CARERE (Cambodia Area Rehabilitation and Regeneration Project), international and local NGOs, and villagers concerned about the survival of their livelihood. The Special Representative discussed with leaders of the Indigenous Women's Network the particular difficulties faced by indigenous women in the areas of education, health and economic development. He also visited the prison and held discussions with prison, court and police officials.

13. On the question of the Khmer Rouge, the Special Representative received from the Prime Minister an aide-mémoire for the attention of the Secretary-General entitled "An analysis on seeking a formula for bringing top KR leaders to trial". The aide-mémoire was presented in the form of a collection of public opinions.

14. The Special Representative emphasized that the work of the United Nations was based on the June 1997 letter from the then

co-Prime Ministers requesting assistance in addressing the atrocities which occurred during the period 1975-1979 under Khmer Rouge rule. He stressed that the international community should be respectful towards Cambodia as it deals with this delicate and difficult question and pointed out the importance of safeguarding the integrity of the process which also would include Cambodian participation.

15. Support for the work of the group of experts was also expressed by the President of the National Assembly President Prince Ranariddh, the opposition leader Sam Rainsy, and the NGO community. The Special Representative was pleased to see broad support for justice for the Khmer Rouge leaders from the Cambodian population, expressed through the petition campaign carried out by the NGO Action Committee, which has already collected over 90,000 signatures.

16. The Special Representative raised with the authorities in Phnom Penh the issue of the arrest of the two staff of the NGO Ligue cambodgienne pour la protection et la défense des droits de l'homme (LICADHO) in Sihanoukville. He believed that the arrest of human rights workers in such circumstances, without evidence and without warrants, sent a worrisome message to the human rights community and raised doubts about the Government's commitment to human rights as contained in its platform. He stressed the need for the Government to review what had happened and to confirm to the NGO community that the Government viewed its role in society as necessary and positive.

17. The Special Representative had a discussion with members of the governmental Cambodian Human Rights Committee which was mandated to ensure that investigations were carried out into the killings reported to the Government in the August 1997 and May 1998 memoranda presented by the Special Representative. He expressed his concern about the lack of progress on the investigations to the Prime Minister and to the co-Ministers of the Interior, mentioning in particular the case of Secretary of State Ho Sok. He suggested the need for an initiative directly from the Prime Minister in order to give some strength and vigour to the investigations.

18. With regard to the functioning of the justice system, the Special Representative discussed the need for the regular convening and more effective operation of the Supreme Council of Magistracy, the need to repeal or amend article 51 of the Civil Servants Act, the difficulties and problems in the prisons, the need for police reform, and the problems faced by court officials when dealing with cases in which the military was involved. The Special Representative was encouraged to hear indications of plans and strategies to address some of these problems.

19. The Special Representative discussed the provision of external expertise on criminal investigation methodology and reform of the justice system, and stressed the need for coordination in these areas among the Cambodian Human Rights Committee, the Ministry of Justice and the Ministry of the Interior.

20. The Prime Minister referred to the communal elections planned for the end of 1999. Several issues remained under consideration including the legislation and the time-frame. In particular, the Government was debating

whether to hold elections only for a chief or for the entire council of the commune. The Special Representative would collect information regarding experiences from other countries to facilitate the discussion.

II. MAJOR ISSUES AND RECOMMENDATIONS

A. Politically related violence

21. Political tension after the 26 July elections continued in August-September and led to several instances of violence. The main opposition parties, FUNCINPEC and Sam Rainsy Party, requested a clarification of how the decision had been taken to use a certain formula for the allocation of seats in the National Assembly. They also requested a comparison between the numbers of used and unused ballots - in effect, a recount. These demands were supported by a series of street demonstrations. In late August, sit-ins outside the National Assembly and in front of the Ministry of Information were organized. In the evenings and during weekends, the sit-in outside the National Assembly attracted several thousand participants. The demonstrations were peaceful, with the exception of acts of vandalism against the Cambodian-Vietnamese Friendship monument in the park outside the National Assembly on 30 August. During the sit-in, about 10 persons, suspected of being government infiltrators, were apprehended by demonstration guards, interrogated and, in several cases, pushed around or beaten. They were soon released, however, at the instigation of COHCHR staff.

22. On the evening of 20 August, Sam Rainsy joined party activists in a night vigil in front of the office of the National Election Committee in the compound of the Ministry of the Interior to safeguard the ballot bags and support their demand for a recount. Unidentified men drove past the entrance to the Ministry, throwing a grenade and firing shots at a group of journalists and other people standing there. Instantly killed was Sieng Sean, a former government official who was working as a driver for a Japanese news agency; Sam Rainsy had been standing at the spot only moments before. The United Nations Secretary-General issued a statement the following day deploring the attack, reminding the Government of its written pledge to him on 22 October 1997 to ensure the protection of political leaders and calling for a dialogue to resolve outstanding disputes. Following the attack, Sam Rainsy and his colleagues were rounded up by Ministry of Interior officials, pushed, had shots fired over their heads and were detained for some two hours. The group was released after a team of United Nations monitors and COHCHR staff intervened.

23. At that time, rumours were circulating in Phnom Penh that Vietnamese food-sellers had poisoned wine and that people had died as a result. There were no grounds for these accusations, but they stirred strong anti-Vietnamese feelings in the capital. A contributing factor was the anti-Vietnamese rhetoric frequently used by opposition speakers in their speeches during rallies. A popular opposition radio station broadcast an obviously fabricated interview with a young Vietnamese girl who "confessed" that she had received poison from Vietnam to put into the wine. On 3-4 September several incidents of mob violence against ethnic Vietnamese occurred, leading to the lynching of three women and a man and injury to a dozen others. COHCHR documented these instances and called on the Government to clarify the cause of the alleged

deaths by poison, to investigate those murders and to punish those responsible. It also called on the opposition to refrain from anti-Vietnamese language.

24. On 7 September, three grenades were thrown into the compound of Hun Sen's Phnom Penh residence. No one was harmed. According to witnesses, the grenade thrower and his accomplice were escaping on their motorbike when they had an accident behind the Independence Monument. They fled into a side street where the grenade thrower was apprehended by either local residents or policemen in plainclothes and beaten to death with an iron club. The dead man bore documents showing that he was a police intelligence agent. No result has been reported of the official investigation into this attack and the killers of the grenade thrower were not punished.

25. Soon after the grenade attack co-Prime Minister Hun Sen held a press conference and accused Sam Rainsy of being responsible. Demonstrations were banned and security forces were to take action if demonstrators refused to disperse. Restrictions were placed on travel outside Cambodia by incumbent and newly elected National Assembly members and some other opposition figures. The travel ban remained in force until the day after the new National Assembly was sworn in. It was maintained longer against several opposition figures, such as Kem Sokha, against whom charges were filed for incitement to racial hatred. The Special Representative issued a statement in support of the right to freedom of movement. He also wrote to the Government about the case of Kem Sokha. Out of fear of being arrested, Kem Sokha went into hiding, where he stayed until mid-November when he was given guarantees that the court summons would not be used as a pretext for arrest. In mid-December, he appeared before the court and responded to questions from the investigating judge. Although the case has not been dismissed, Kem Sokha has expressed confidence about his safety.

26. Sam Rainsy sought refuge on 7 September in the Office of the Personal Representative of the Secretary-General which is located in the Cambodiana Hotel. Supporters assembled outside the hotel and police and gendarmes were ordered to disperse them. Shots were fired and at least one protestor was shot in the head and killed. Another death was reported by credible witnesses and COHCHR is still checking this information.

27. The next day the security forces were ordered to crack down on the sit-in demonstrations, which they dispersed with limited violence within two hours. From then on, demonstrators became mobile and began marching. Buddhist monks joined the demonstrations in large numbers. A counter-demonstration was organized with an estimated 10,000 supporters of the Cambodian People's Party (CPP) trucked in from outside the city. Many of them were armed with sticks, iron bars and stones. Fortunately, a confrontation did not take place.

28. The street demonstrations, which continued for about a week, were in general peaceful and the security forces acted with restraint. However, on some occasions, street battles occurred, mostly at the instigation of agents provocateurs, among whom were members of the security forces dressed in civilian clothes and armed with handguns. Protesters usually responded by throwing stones or marbles with slingshots. Security forces charged

protesters and fired warning shots. During one of these clashes on 11 September near the United States Embassy, Chun Samnang, a 28-year-old teacher, was shot dead at close range by security personnel. On the same day, COHCHR issued a statement calling for the withdrawal of the agents-provocateurs. During that week, at least 77 people were injured, 16 by gunshots. Among them, 18 monks and a nun were injured, 2 of them by gunshots, when security forces violently broke their ranks.

29. Many demonstrators, including young women and Buddhist monks, were arrested by gendarmes and policemen from the Flying Tigers unit. Most were taken in trucks to military intelligence headquarters or units before being detained in secret places of detention. Only 14 arrests were officially acknowledged by police authorities. COHCHR visited police stations and places of detention in search of these arrestees. With the exception of the police station in Tuol Kork where over 25 demonstrators were detained, the searches were unsuccessful. At the end of the week, reports began to reach the office of dead bodies of young men, women and monks floating in the rivers around the capital. Investigations into these reports by COHCHR staff confirmed that 24 dead bodies had been found. Most were young and they included women and Buddhist monks. With two exceptions, the identities of the corpses could not be established and it was therefore not possible to prove any direct link between the victims and involvement in the demonstrations or related political activities. However, it was confirmed by COHCHR staff and other eyewitnesses that many bodies bore signs of violent death: they had bullet wounds, broken limbs, marks of strangulation and other signs of torture; many of them were found with their hands tied and several had been blindfolded or gagged.

30. On 16 September, the Special Representative expressed grave concern at the disappearance of protesters arrested by security forces and at the simultaneous discovery by human rights investigators of a large number of bodies at various sites around the capital. He called on the Government to account for all arrested protesters and requested investigations into these unusual deaths. The Cambodian Committee for Human Rights responded later with a report describing six cases of deaths, which it stated were related to personal disputes. COHCHR also began to compile lists of protesters witnessed or reported to have been arrested so as to verify them case by case. It estimated that at least 50 people had been arrested during the demonstrations. As of mid-January 1999, it was continuing its efforts to trace disappearances. At least eight identified individuals remained to be accounted for. COHCHR forwarded the list of missing persons to the governmental Cambodian Human Rights Committee for investigation.

31. In mid-September, threats, including death threats, against the COHCHR staff were heard over the United Nations radio network. This was the first time that explicit threats against named Cambodian staff members, as well as the staff in general, were made. The sources identified themselves as belonging to the Ministry of the Interior and as having in their possession detailed files on the identities and activities of the staff members.

32. A government spokesman wrongly stated that COHCHR had led the demonstrations and that its radio was used to spread anti-Government messages. A United Nations vehicle was confiscated on 14 September and three staff

members of the Office of the Personal Representative of the Secretary-General detained temporarily. On the same day, one COHCHR staff member was roughly treated and verbally abused by a gendarme. An official complaint was lodged with the Ministry of Foreign Affairs about the radio threats and the treatment of the staff member.

33. When the new National Assembly was convened in Siem Reap on 24 September, a rocket attack was launched against the vehicle convoy in which co-Prime Minister Hun Sen and other elected Assembly members were being transported. Hun Sen said that the attack appeared to have been aimed at him and blamed the opposition. The police investigation has so far yielded no result.

34. The new National Assembly was sworn in and the ban on travelling by most opposition figures lifted. Prince Norodom Ranariddh and Sam Rainsy, soon followed by a large number of new opposition parliamentarians, left for Bangkok from where they reiterated that their two principal demands (relating to the election formula and the need to recount both used and unused ballots) must be met before any power-sharing could be considered. They also asked that amnesty be granted for a number of opposition figures currently in exile or who had taken up armed resistance since July 1997. Almost two months later, in November 1998, and after patient mediating efforts by His Majesty the King, a power-sharing arrangement was agreed. This paved the way for the formation of a new coalition Government composed of the CPP and FUNCINPEC, leaving the Sam Rainsy Party in opposition.

35. The political settlement between political parties, which included amnesty for the top generals who had gone into armed opposition after July 1997, also resulted in the beginning of the repatriation of an estimated 40,000 refugees who had been living in refugee camps in Thailand since August 1997. It further facilitated the surrender in December of the last groups of Khmer Rouge soldiers who had continued some armed activities in pockets along the border with Thailand. Along with an estimated 600-800 defectors and their several thousand family members, two of the three remaining senior leaders of the Khmer Rouge eventually surrendered to the Government. In December, Khieu Samphan, the nominal leader of the Khmer Rouge since 1980, and Nuon Chea, Pol Pot's deputy since the 1960s, were received by Prime Minister Hun Sen.

B. Proceedings regarding Khmer Rouge crimes

36. Important moves have been made by the Cambodian Government since the Commission on Human Rights in April 1997 raised the issue of past human rights violations. In its resolution 1997/49 the Commission strongly urged the remaining Khmer Rouge to cease fighting and reiterated its concern about serious abuses committed by remaining Khmer Rouge. The Commission, furthermore, requested the Secretary-General, through his Special Representative for Human Rights in Cambodia, in collaboration with COHCHR, to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability.

37. On 21 June 1997 the First and Second Prime Ministers jointly wrote to the Secretary-General requesting the assistance of the United Nations and international community in bringing to justice those persons responsible for the genocide and crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979. In their letter, the co-Prime Ministers stated that Cambodia did not have the resources and expertise to conduct a procedure of that scope. They stated that they were aware of similar efforts to respond to the genocide and crimes against humanity in Rwanda and the former Yugoslavia. In asking for similar assistance for Cambodia, the co-Prime Ministers stated that they believed that crimes of this magnitude were of concern to all persons in the world. They expressed the hope that the international community would assist the Cambodian people in establishing the truth about the period 1975-1979 and in bringing to justice those responsible (see annex).

38. On 12 December 1997 the General Assembly adopted resolution 52/135 in which it requested the Secretary-General to examine the request by the Cambodian authorities for assistance in responding to past serious violations of Cambodian and international law, including the possibility of appointing a group of experts to evaluate the existing evidence and propose further measures, as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability. The Commission on Human Rights reiterated this position in resolution 1998/60.

39. In August 1998 the Secretary-General appointed the group of experts on the advice of the Special Representative. Appointed were Sir Ninian Stephen, former Governor-General of Australia, Mr. Rajsoomer Lallah, former Chief Justice of Mauritius, and Professor Steven Ratner from the University of Texas, United States of America. Their mandate was to evaluate the existing evidence with a view to determining the nature of crimes committed by the Khmer Rouge leaders in the years 1975-1979; to assess, after consultation with the Governments concerned, the feasibility of bringing Khmer Rouge leaders to justice; and to explore options for bringing to justice Khmer Rouge leaders before an international or national jurisdiction. The conclusions and recommendations of the group of experts were to be presented to the Secretary-General as early as possible. They are now expected in February 1999.

40. The group met for the first time in New York in September 1998, where they met with the Secretary-General and other senior United Nations officials as well as representatives from the diplomatic community. The group went to Cambodia in November in order to consult with Cambodian officials and non-governmental representatives, including co-Prime Minister Hun Sen and FUNCINPEC leader Prince Ranariddh, and to assess the nature of existing evidence of crimes committed.

41. In its platform of 23 November 1998 the new Government stated that the hard-line leaders of the outlawed Khmer Rouge would be brought to trial.

42. The Special Representative has discussed this issue with those concerned, including His Majesty the King, senior members of the Government, political party leaders, representatives of civil society and the diplomatic community, during his regular visits to Cambodia since early 1997. The

Special Representative has consistently been assured of their support for this process by those with whom he had discussions. During his twelfth mission, the Special Representative discussed the issue with the Prime Minister, the President of the National Assembly, the co-Ministers of the Interior, the Minister of Justice and the leader of the parliamentary opposition, all of whom declared their support for the work of the group of experts.

43. In January Prime Minister Hun Sen handed the Special Representative an aide-mémoire for the Secretary-General outlining considerations for further discussion on how the legal proceedings could be organized. The document made the point that crimes had also been committed before 1975 and after 1979. Furthermore, it stressed the importance of protecting peace when establishing justice. The Special Representative promised to convey these points to the experts. He noted that the experts had been asked to base their analysis on the Government's letter of 21 June 1997 and to suggest procedures which would meet the highest legal standards and demonstrate to the Cambodian people that justice was being done.

44. At the time of writing, the recommendations of the experts had not yet been finalized. The Special Representative hopes that their report will facilitate proceedings against those responsible for the killings and other grave human rights violations committed during the Government of the Khmer Rouge and that the international community will continue to support Cambodia in this important endeavour.

C. Impunity, the police and the military

45. The phenomenon of impunity and its institutional expression have been documented in previous reports by the Special Representative. It constitutes the single most important obstacle to efforts to establish the rule of law in Cambodia. It includes the lack of response to acts of political violence but is also reflected in the almost daily reports of abuses by military and police officials against common people, including killing, rape, illegal arrest or kidnapping for extortion as well as beating and other violent acts. While the courts lack human and other resources, individuals within the security forces are armed, powerful and protected. People whose rights are violated by security personnel have no effective recourse to justice. This undermines the sense of justice and makes some people believe that the only way to defend one's interests is through violent means.

46. A particularly disturbing aspect of the impunity problem in Cambodia relates to the serious crimes with political connotation, including assassinations, which have taken place during recent years and which have not been clarified. The Special Representative has reported to the Government on the deaths or disappearances of over 130 persons since 30 March 1997 and has repeatedly requested that serious investigations be undertaken. The two experts who in April 1998 on behalf of the United Nations High Commissioner for Human Rights and the Special Representative evaluated the government investigations into the grenade attack in March 1997 and the killings in July-August 1997 concluded that inquiries, when undertaken, had lacked vigour and determination. Unfortunately, the Special Representative has to draw the same conclusion regarding the response to his additional memorandum to the

Government in May 1998 which described some 40 further cases of killing and to subsequent reports documenting further deaths in similar circumstances which occurred during the second half of 1998.

47. When the Special Representative met with the Prime Minister in January 1999, he expressed his concern that so little progress had been made on these cases. He has the distinct impression that serious investigations into the grenade attack, the killings and the other murder attempts have indeed been blocked by powerful elements within the police and the military. This in turn has caused anxiety and confusion in the more professional circles within the law enforcement structures. This is no doubt an immense problem within the Cambodian justice system and one which will not be resolved until the political leadership clearly demonstrates that no one is protected.

48. The governmental Cambodian Human Rights Committee was set up, inter alia, to pursue or initiate inquiries into such cases. It has not reported significant progress on any of the above-mentioned cases, but it did investigate some of the reports of possible human rights violations brought to it during and after the election campaign. This helped to clarify facts in some of the cases and also secured the release of a kidnap victim.

49. Another serious problem is the excessive use by policemen of lethal weapons when trying to capture suspects. Firm measures are required to put an end to the frequent killings of suspects during arrest, some of which have been outright executions. Such killings are a matter of serious concern to the Special Representative who has requested COHCHR to study this problem in cooperation with relevant police authorities. Illustrative instances of lethal abuse of power by security forces in recent months include the extrajudicial killing by police officers on 30 September of farmer Vorn Meak and of defecting FUNCINPEC soldier Pard on 6 October in Kompong Cham; the killing of Soeun Dy and Toeun Rithy, accused of murder and robbery on 14 September in Pailin; and the accidental injury by shooting of a young woman on 12 November, and of a villager on 13 November, when police opened fire carelessly on suspected robbers in two separate incidents in Battambang.

50. COHCHR has also monitored and followed up numerous cases of illegal detention such as the arrest and detention on 12 November of 16 persons in Phnom Malai accused of having been involved in a rebellion and the detention in Ta Khmau of a teenager accused without evidence of being involved in the kidnapping and killing of a 9-year-old girl, who was released after his father allegedly paid a substantial bribe to the police.

51. A matter of serious concern is the involvement of police and military personnel in criminal kidnapping for ransom. Police reports show that kidnappings occur almost every week in Phnom Penh, and are now also taking place in some of the provinces, including Kompong Cham, Siem Reap, Banteay Meanchey, Kampot and Battambang. Kidnappers normally not identified and arrested by the police who claim that victims will not cooperate out of fear of reprisals. Another type of case was reported on 26 January 1999 by a woman whose daughter was detained by a military policeman who said she would be released only if the woman paid US\$ 300 to a brothel owner. With the assistance of LICADHO, COHCHR, the Department of Social Affairs and the district police, the young girl was found in the gendarmerie office in a

district of Phnom Penh. A military policeman admitted keeping the young girl because she owed his brother money. He refused to release the girl until the money was paid.

52. The Cambodian Human Rights Committee outlined in a meeting with the Special Representative in January 1999 the first steps towards a reform of the police system. This is clearly needed. The Cambodian police have to go through a process of depoliticization and, at the same time, develop genuine expertise in criminal investigation and local law enforcement. The recruitment policy should be reviewed, not least for the higher ranks, and relevant qualifications recognized and rewarded. In order to foster professionalism it is necessary to give priority to education and training. The Special Representative recommends that a Police Academy be established.

53. It would favour a depoliticized, impartial police force if its leadership would avoid making premature public statements about guilt in individual cases of crime. The Director-General of the National Police made such unfortunate pronouncements during the period of political unrest in August-September 1998, putting blame on opposition leaders.

54. The Government has already decided to trim down the overstuffed police forces and to review their structures and chains of command. At the same time, it will be necessary to take action to stamp out corruption, which requires firm disciplinary action but also better and promptly paid salaries for those in the ranks. The future code of criminal procedure should clarify the authority of the police and the principles of acceptable policing methods. More detailed instructions are needed to regulate procedures for arrest, the use of weapons, house searches, interrogations, etc. The implementation of existing rules must also be ensured, for instance, putting an end to the use of force to extract confessions and to the practice of keeping people in police custody for periods exceeding 48 hours.

55. Several of the above suggestions were discussed at a consultation on police reforms organized by the Asian Human Rights Commission in early January 1999 with the participation of Cambodian government and police representatives, in their personal capacity, as well as non-governmental organizations. The Special Representative found the report of that meeting useful as a contribution to the further preparation of police reforms. The Government has also requested further expert advice from COHCHR in this field.

56. Similar reforms are needed also within the military forces to ensure proper discipline. The Prime Minister and the co-Ministers of Defence indicated to the Special Representative in January 1999 that this was a high priority. The integration of former opposition troops, including ex-Khmer Rouge soldiers, and the demobilization of some parts of the forces would be combined with a process of de-politicization. Disciplinary action should be taken against soldiers and officers who abused civilians.

D. The functioning of the judicial system

57. Interference, intimidation and threats against the courts by the police and military is another matter of concern to the Special Representative. In October 1998 another example of this malpractice was reported. In one

province a police commissioner and some of his deputies visited the president of the court and the chief prosecutor to discuss a case in which a police officer had been charged with murder but claimed self-defence. The police did not acknowledge the power of the court to arrest and investigate a police officer, despite having obtained permission from the Ministry of the Interior. The Special Representative urges the Government to instruct the police and the military to recognize the authority of the courts and to obey court orders.

58. The lack of integrity of some of the courts also undermines justice. In November 1998, the Special Representative sent a letter to the General Prosecutor about the beating to death of a young woman by a brothel owner in Banteay Meanchey. A charge of voluntary manslaughter against the brothel owner had been dismissed by the investigating judge of the Banteay Meanchey Provincial Court, who cited "lack of evidence" as grounds for dismissal despite the testimonies of 11 eyewitnesses to the beating. Also in November, the General Prosecutor sent a letter to the Banteay Meanchey prosecutor, noting the existence of procedural errors and recommending that charges of involuntary manslaughter, battery with injury, and violation of the law against trafficking in women be filed against the brothel owner. In December 1998, a representative of the Ministry of Justice went to Poipet to investigate the case. His investigation was hindered by veiled threats and intimidation by the local authorities. That same month, the President of the Banteay Meanchey Court stated that the evidence in the case (the 11 testimonies) had been lost; he seemed reluctant to file additional cases against the brothel owner, stating that the latter was being supported by powerful people in the military.

59. Political support is required to ensure that the judiciary has effective authority to prosecute all offenders, regardless of their identity, status or rank. However, additional basic legislation is also needed, such as a penal code and a code of criminal procedure. The existing drafts of these laws require further discussion and improvement, but their finalization and adoption should be a high priority. Furthermore, there is a need for laws and structural initiatives to reform the administration of justice itself. The Minister of Justice outlined a plan for such work in January 1999, which included a rationalization of the organization and structure of the court system. He also plans to suggest an amendment to article 51 of the 1994 Law on Civil Servants.

60. Article 51 in reality institutionalizes impunity. It states that prosecution of civil servants requires the approval of the ministry where they are employed. Approvals of prosecutions under article 51 are often delayed by several months, during which time the suspect remains at large and intimidates witnesses or forces a settlement. The Special Representative welcomes the commitment of the Minister of Justice to tackling this problem.

61. The Special Representative is concerned that the Supreme Council of Magistracy, one of the institutions essential for strengthening the rule of law in Cambodia, has not been more active since it was convened on 3 December 1997. The main function of the Supreme Council is to oversee the functioning of the judicial system, including the appointment and disciplining of judges and other court personnel. There are currently two vacancies on the Council which need to be filled. The Special Representative

stresses the need for the Supreme Council of Magistracy to be convened regularly to address the problem of corrupt, incompetent and inefficient judges, prosecutors and court clerks.

62. The Special Representative notes that steps are being taken to clarify the relationship between the Ministry of Justice and the courts. The draft Statute on Magistrates, which covers the recruitment, compensation and disciplining of the judiciary, should be finalized and submitted to the National Assembly. At the time of writing, comments on the draft law had been prepared by various legal aid organizations and COHCHR.

63. In the past, Ministry of Justice circulars have not only concerned administrative matters, but have in some cases also interpreted laws. Such interpretation is beyond the scope of the executive branch. The Special Representative commends that the Minister of Justice order a review of previously issued circulars which infringe upon the independence of the judiciary.

64. The low salaries of court staff continue to be a major problem and have a direct link to the existence of corruption in the courts. The draft Statute on Magistrates proposes an increase in the salaries of judges. The Special Representative reiterates his suggestion to the Government that this law be finalized and adopted, as well as his proposal that the budget allocation for all court staff and court operations be increased.

65. Many courts are unable to bring detainees to trial within the time limits stipulated by law. Several prisoners have been detained well over a year without being brought to trial. One such case is Heng Chanthol in T3 prison in Phnom Penh who was arrested on 27 July 1997 on a charge of kidnapping for ransom. He has still not been brought to trial. The Special Representative urges the Government to examine the causes of pre-trial detention for excessive periods and the reasons why investigations cannot be conducted within the required time. In many cases, suspects have spent several months in pre-trial detention before an investigation is even undertaken. The Special Representative reminds the Government that unduly prolonged pre-trial detention violates the presumption of innocence and the right to a speedy trial.

66. The Special Representative has continued to follow cases which might constitute miscarriages of justice. He was gravely concerned at the arrest and detention in Sihanoukville of two LICADHO human rights workers, Kim Sen and Meas Minear, on 21 October. There was an obvious lack of evidence against the two accused. In addition, a number of serious procedural irregularities took place in the handling of the case. The arrests were not carried out in accordance with the law, and the lawyers of the two human rights workers were denied access to the case files for three weeks. However, despite these irregularities and the lack of evidence, the case had not been dismissed at the time of writing, but was still being investigated by the Sihanoukville Provincial Court. Temporary pre-trial release of Kim Sen and Meas Minear was granted on 20 January 1998 by the Court of Appeal.

67. There have been further developments in the case of Chao Sokhon, the FUNCINPEC deputy chief of the Sihanoukville military police sentenced

to 15 years' imprisonment in June 1997 and an additional 3 years in September of the same year for drug trafficking. The Court of Appeal overturned these sentences in December 1997, and the three sitting judges were shortly thereafter suspended by the Ministry of Justice. The General Prosecutor lodged appeals with the Supreme Court in January and February 1998. The Supreme Court did not hold the trial until 23 December 1998, as the files had been with the Ministry of Justice since December 1997. During the Supreme Court trial, the prosecutor stated that Chao Sokhon was guilty of the charges, but that the evidence against him was insufficient. Despite this lack of evidence, Chao Sokhon was not acquitted; the Supreme Court ruled that the case should be sent back to the Court of Appeal for further investigation. The three judges who had been suspended in December 1997 were reinstated on 1 January 1999.

E. Torture

68. Torture and ill-treatment of arrested persons continues to be a problem. In spite of previous efforts by the Ministries of Justice and the Interior to stem such malpractice, the Special Representative has received new evidence that it still occurs. People taken into custody by the police, gendarmerie or military are frequently beaten during interrogation for the purpose of extracting confessions to be used as evidence in court. Complaints by defendants that they have been tortured or ill-treated do not get a serious response in court proceedings. Sentences are often passed on the sole basis of a confession produced under torture while reports about torture normally are left without follow-up.

69. In mid-January 1999, the Prosecutor and the Police Commissioner of Battambang province commented on the dossier containing 32 instances of alleged torture by Svay Por district police and other provincial investigators, which had been submitted to the Government by the Special Representative in June 1997. This submission was followed up by two visits to Battambang province, where the Special Representative discussed the issue with police, court and other officials. The question of the dossier had also been raised at two meetings with the Director-General of the National Police. In his preliminary response, the Prosecutor wrote that 2 of the 32 cases in the dossier had been tried and that a third case had been dismissed. COHCHR is seeking clarifications concerning the effective outcome of the trials.

70. The police report, which describes 30 of the 32 cases, denies that torture had ever occurred in any of the cases. While welcoming the fact that investigations were conducted into these cases, the Special Representative regrets that the credible allegations of torture, several of which had been confirmed by physical evidence, were not taken more seriously. In one of these cases, which resulted in the death of the detainee, the report maintains that the victim committed suicide despite compelling evidence that he died from torture. The response from the Police Commissioner illustrates that such investigations must be conducted impartially and outside the immediate police structure. No police officer has so far been prosecuted or even administratively sanctioned for any of the acts of torture.

71. The Special Representative will continue to monitor the situation of torture in Cambodia. A comprehensive strategy is needed, one aspect of which

should be to dismiss and punish security officials who are proven guilty of having used torture. This, in turn, would require political support at the highest level to make it possible for the courts to begin to take action against the torturers.

F. Prison conditions

72. The number of prisoners increased by about 20 per cent during 1998 contributing to overcrowding in some of the prisons. There are now approximately 2,350 inmates in Cambodian prisons, with 1,597 convicted prisoners and 753 pre-trial detainees. This problem is further aggravated by the fact that convicted prisoners are not detained separately from those awaiting trial.

73. COHCHR paid visits to 15 of Cambodia's 25 prisons from September to December 1998. Special attention was given to examining the legal basis for detention, access to legal counsel, the length of pre-trial detention, as well as the physical conditions of detention. The visits were followed by meetings with relevant officials.

74. COHCHR staff have had access to all prisons administered by the Ministry of the Interior. This included a general visit to the Judicial Police prison (PJ) and the T3 prison in Phnom Penh where more than 60 inmates had been held beyond the maximum six months before trial. The interviews also indicated that many inmates had been ill-treated while in custody before their transfer to prison.

75. While access to prisons for humanitarian NGOs is usually allowed without difficulties, legal aid NGOs have sometimes been denied entry and, as a consequence, some detainees have remained without legal representation. For instance, in Prey Veng prison, 25 out of 57 accused detainees were not assisted by lawyers.

76. In some prisons, the material conditions of detention have been improved through assistance from the Australian Criminal Justice Assistance Project (financed by AusAID) and the ICRC. The ACJAP is constructing and renovating five prisons and the ICRC is renovating 17 provincial prisons, including their kitchens, toilets, cells and ceilings. Several other prisons are still in bad condition.

77. In almost all the prisons visited, the food situation continues to be of serious concern. Prisons receive a ration of only 1,000 riels (equal to about US\$ 25) per prisoner per day for food, water, electricity and firewood. This is clearly insufficient. During the last quarter of 1998, COHCHR noticed that many prisoners were suffering from malnutrition-related diseases. In November 1998, a 19-year-old man arrested almost a year earlier and convicted two months later died of beriberi in Prey Sar prison in Phnom Penh.

78. The health of the inmates depends largely on their relatives' ability to deliver extra food supplies. The Cambodian human rights organization LICADHO distributed biscuits provided by the World Food Programme (WFP) and donated by CARE-Australia and the Norwegian Government to supplement the prisoners' diet. This was done on an emergency basis and cannot be sustained. The Government must take responsibility for feeding the prisoners.

79. The Ministry of Health is responsible for medical care of prisoners, including the provision of medicines. In reality, the means are scarce for such medical attention. The Australian Criminal Justice Assistance Project gives important assistance in this field as do domestic NGOs such as LICADHO. There is an urgent need for the Government to develop a clear policy on how to deal with prisoners with AIDS and other terminal illnesses. It is estimated that at least six HIV-positive prisoners died during 1998 and there are presently several persons imprisoned who are in the last stages of AIDS.

80. During his visit to the Ratanakiri prison in January 1999, the Special Representative met several under-age detainees, one of whom was only 13 years old. Children should not be detained under such conditions, even for a short time. On the other hand, transfer to the Youth Rehabilitation Centre near Phnom Penh may not be in their interest as this would reduce the possibility of visits by relatives. Also, there is no legal basis for the detention of minors in this centre. There is a need for a more radical and humane approach to the treatment of young delinquents. In this, the experiences of juvenile justice reform in other countries could be of benefit.

81. Many prisoners continue to escape from Cambodian prisons. During 1998 no fewer than 85 cases were documented by LICADHO. More than 20 prisoners made an abortive attempt to escape from Kampong Cham prison in September 1998. One prisoner was shot by a policeman and died in the provincial hospital. Other reports of prisoners shot dead trying to escape were received from Pailin and Svay Rieng. The lack of serious investigation after such events is of concern to the Special Representative.

82. Leg irons, handcuffs and other instruments of restraint have again been used in some of the prisons, for instance in Kompong Cham in September 1998 following the escape attempt and in the Sihanoukville prison more recently.

83. In some prisons, such as Takhmao prison in Kandal, the inmates are only permitted to go outside their cells for a few minutes per day. The Special Representative raised concerns with the authorities in Phnom Penh about the difficult conditions in Ratanakiri prison, where inmates are locked up for excessively long hours and the provincial prison administration lacks support.

84. Prison regulations have been developed by the Prisons Department of the Ministry of the Interior with the help of the Australian Criminal Justice Assistance Project. The regulations, which have been reviewed by COHCHR, include provisions of relevant international standards such as the Standard Minimum Rules for the Treatment of Prisoners. Prison directors are now being trained in their application.

G. Labour rights

85. The Special Representative continues to have grave concerns about poor labour conditions and violations of the Labour Code of 1997. In many cases, the factory management appears not to have any intention to respect the Labour Code. Abuses reported include: forced overtime without pay; loss of pay or employment for refusing overtime; dismissal without cause; no rest day; fines for taking a rest day; garment factory workers not receiving their stipulated monthly wage of US\$ 40; and hazardous working environments.

86. In January 1999, there were strikes in a number of factories. Strikers demanded better working conditions, that wages be paid on time and that union members not be mistreated. Workers who have openly supported independent unions or workers' rights have been dismissed or transferred to a different position where the working conditions are harsher to encourage them to leave.

87. In previous reports the Special Representative has expressed concern over the fact that a number of trade unions that qualified for registration were not recognized by the Government and could not be registered. However, the new Government has now registered many of those unions, and the Special Representative welcomes the decision by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation to do so. In future, all free trade unions that qualify should be registered. The Ministry should also take steps to enforce the Labour Code in all factories, in particular in the garment industry.

88. There appears also to be a need to monitor the treatment of Cambodian workers abroad. One particular case, reported to COHCHR, concerned a Cambodian woman who had contracted to work in Malaysia. Once there, she was ill-treated by the Cambodian agency which recruited her: she was slapped, kicked, and detained for over one month in a small unventilated room, together with around 50 other women. Her mother paid the agency to secure her release. COHCHR has asked the Malaysian Embassy for assistance in this case; the Special Representative welcomes the positive response of the Malaysian Ambassador.

H. HIV/AIDS

89. HIV/AIDS is becoming a major threat to the right to life in Cambodia. Recent statistics indicate that 5,000 people have already died of AIDS, and a further 5,000 deaths are expected within the next 12 months. If the epidemic continues at its present rate, AIDS will soon become one of the leading causes of death among young people. By the year 2000, as many as 1,000 children will die each year of HIV/AIDS contracted from their parents, and 10,000 children will have become orphans.

90. It is important that the Ministry for Women's Affairs and Veterans has made the fight against the spread of HIV/AIDS in Cambodia one of its major priorities. The United Nations agencies and their NGO partners have disseminated information about the epidemic and taken practical measures to stem it. In December 1998, a briefing pack aimed at policy makers, entitled "AIDS in Cambodia: Asia's fastest-growing epidemic", was produced by the United Nations Theme Group on AIDS and widely distributed. The document recommends specific actions to be taken by government institutions, including a commitment to combating the epidemic by key ministries such as Economy and Finance, Defence and the Interior, strengthening the national AIDS programme, increasing budgetary allocations, and improving efforts in HIV/AIDS education and information.

91. It has been estimated that among the 75,000 men affected, 10,000 are soldiers and 5,000 are policemen, both groups highly mobile and with high levels of sexual activity. Research shows that more than 90 per cent of HIV

transmission occurs during sex without a condom. Prostitutes are, of course, especially at risk from unprotected sex. While condoms are reportedly available in over 90 per cent of brothels, many prostitutes are not in a position to insist on their use. An estimated 39 per cent of them are already infected with HIV, one of the highest rates in Asia. Young prostitutes are at even greater risk of infection both for biological reasons and because clients select them since they are less likely to be already infected.

92. The implications of the HIV/AIDS epidemic are serious for all women in a society where they may be forced to have sex without their consent, within or outside their homes, where their level of education is likely to mean that their access to information about HIV/AIDS and its prevention is limited, and where high levels of other untreated sexually transmitted diseases predispose them to HIV infection.

93. As well as the obvious consequences of HIV/AIDS for those affected and their families, the spread of the epidemic imposes severe strains on a health service already challenged by existing problems. The annual cost of caring for each patient with AIDS in 1999 is estimated at US\$ 291, more than 10 times the current per capita expenditure for health.

94. The Special Representative is also concerned that these costs and the lack of awareness among large parts of the population result in limited care for the majority of those infected.

I. Women's rights

95. The Special Representative notes that the low level of representation of women in public life itself constitutes an obstacle to tackling social problems which have a particular bearing on women. Although 10 women were elected to the National Assembly in 1998 (out of a total of 122 members), only 9 remain after the resignation of some members to devote themselves to their government posts. Women are poorly represented in the new Government: of a total of 35 senior ministers and ministers, only 2 are women; among the 52 secretaries of State, 4 are women; and of the 124 under-secretaries of State, 4 are women. However, the Special Representative notes the appointment of a woman as Minister for Women's Affairs and Veterans, and the recent adoption of a five-year action plan by the Ministry, focusing on the key areas of formal and non-formal education, economic empowerment, reproductive health (including HIV/AIDS prevention) and legal protection.

96. The Special Representative continues to be concerned about women's health issues, particularly with regard to reproductive health. Despite the combined efforts of the Government, United Nations agencies and NGOs, maternal mortality continues at a very high level, estimated at 473 per 100,000 live births in 1995. The national target to reduce the rate to under 300 per 100,000 by the year 2000 is unlikely to be met. Although considerable efforts are being made to increase access to health services, only 32 per cent of the target population of women receive antenatal care and are fully protected against tetanus. Seventy-five per cent of births take place at home. In this context, the efforts of several agencies to upgrade the skills and knowledge of traditional birth attendants take on special relevance.

97. Women members of ethnic minorities living in remote areas confront significantly greater health risks. During the Special Representative's recent visit to Ratanakiri, a province where more than 75 per cent of the population belong to ethnic minorities, he gathered information indicating that fewer than 20 per cent of the population receive antenatal care, with only 16 per cent fully immunized against tetanus. Seventy-eight per cent of births take place at home. Of a total of 839 births recorded by the health services in Ratanakiri in 1997, 26 children were stillborn and 3 women died, rates respectively four and five times higher than the national average recorded by the Ministry of Health's Planning Department in 1997.

98. The health of the ethnic minority women is undermined by multiple factors: lack of access to health services in the sparsely populated areas where they live, cultural and language barriers to effective contact with health staff, inadequate sanitation and nutrition, and low levels of education and information. Malaria is an acute problem in the areas where the minorities reside, reaching infection rates of 40 per cent. However, the WHO-supported campaign to distribute insecticide-impregnated bednets is bringing a noticeable improvement in the minority villages which have already been reached (60 per cent so far).

99. The use of tobacco (both cigars and pipes) is widespread among both men and women, and children start to smoke at an early age. Goitre due to iodine deficiency is common and cretinism is prevalent. The Special Representative commends the efforts of the Government and its partners to ensure that most salt will be iodized by the year 2000, and urges the authorities to ensure that this salt is in fact accessible to minority communities. He welcomes the outreach activities targeting minority communities, planned for 1999, in which vitamin A supplementation for children, intestinal parasite control and iodine supplementation for pregnant women and small children will be added to an intensified programme of malaria screening, treatment and prevention.

100. The Special Representative has commented in previous reports on the low levels of educational achievement among women and the very high rate of school drop-out rate among girls. He therefore welcomes the 1998 National Action Plan on Girls' Education, which identifies priorities and strategies to address the basic education needs of girls. The overall literacy rate of 55 per cent for women compares with a rate of 79 per cent for men; the disparity is even greater among the poorest and in the remote areas. As for school attendance, some 42 per cent of women over the age of 15 have never attended school, compared with 21 per cent of men. Current school attendance rates show that, by the age of 15, enrolment of boys is 50 per cent greater than that of girls.

101. The distance from home and parents' fears for the security of their daughters are factors which discourage parents from sending their daughters to school. The lack of appropriate sanitary facilities is probably another factor preventing girls from going to school; official figures show that 72 per cent of the schools have no latrines. Girls are also asked to take care of their younger siblings while parents work. Nevertheless, those girls who are enrolled and manage to stay in school tend to show better performance than boys, with lower repetition rates and better test results.

102. In remote areas, the problem of low enrolment and retention of girls in the school system is even more marked. The absence of dormitory accommodation makes it in effect impossible for children (whether boys or girls) to attend school in the towns where most schools are located.

103. The economic participation of women is another concern of the Special Representative. Their participation in the labour force is constrained both by their generally inferior educational status and by what appears to be discrimination against them. Women with the same qualifications as men, whether in the private sector or in the public service, are routinely paid less, receive fewer benefits and do not have the same opportunities for promotion. When wage rates are compared for six major occupational groups, and controlled for differences in experience and education, women's earnings are lower by about 36 per cent than those of men.

104. The Special Representative commends the work of the Ministry of Planning, supported by UNDP, in highlighting these and other issues relating to the status of women in the 1998 Cambodia Human Development Report.

J. Children's rights

105. In Cambodia, children under 15 account for 45 per cent of the population. The resulting high dependency ratio (the ratio of the non-working population to the working population) has serious consequences for the social and economic well-being of children, especially those in large families. Recent research indicates a clear correlation between household size and poverty. While only 11 per cent of households composed of two people are poor, the rate increases steadily to reach 58 per cent of households composed of 10 people. Economic well-being is also threatened by rapid population increase, which places significant pressure on the availability of land suitable for agriculture, the mainstay of 80 per cent of the population.

106. Children's education and health status are of particular concern to the Special Representative. While the rights to education and health are protected by the Convention on the Rights of the Child, which Cambodia has ratified, many serious issues remain. Although huge efforts, well supported by the international community, have been made in recent years to establish and equip schools and train teachers, much remains to be done. About 50 per cent of the children who entered grade one in 1996/97 either dropped out of school completely or had to repeat the year. In subsequent grades, 30 to 40 per cent of the children failed to be promoted to the next grade. More than half a million children aged 6 to 11 are not in school.

107. A general lack of trained teachers has a negative effect on all levels of the education system: the best trained are to be found in the secondary system, which few children ever reach. Teachers' performance is inevitably negatively affected by the inadequacy of their salaries, which led them to take strike action at all levels of the educational system in early 1999.

108. The only language of education is Khmer, which contributes to high drop-out and repetition rates for children from minority groups. Only about 25 per cent of children entering the first grade in minority regions are promoted to the second grade, compared with a national (and already low) rate

of 50 per cent. Many minority children in fact never attend school at all, although their parents state that they wish to see their children educated. In Ratanakiri, where 75 per cent of the population consists of minority groups, only about 1 in 10 of the children completing primary school is a member of a minority. The education system in Ratanakiri is further compromised by the unavailability of trained teachers, since few well-trained people are prepared to live in such a remote area, where the opportunities for supplementing their meagre incomes are limited.

109. Given the limited access of the population in remote areas to the formal education system, the Special Representative commends the efforts of NGOs and the local authorities to promote non-formal education programmes for the minority communities, using volunteer teachers from the communities themselves and a curriculum reflecting the daily realities of their lives. He also notes the work currently in progress to transcribe those minority languages which exist only as spoken languages, and hopes that these transcriptions may help to overcome the difficulties faced by minority children in the formal Khmer-based education system.

110. Government expenditure on education has fallen during the last decade. The Special Representative calls on the Government to redouble its efforts to ensure that all Cambodian children can avail themselves of their right to basic education, and to examine the possibility of reallocating to the education sector funds previously allocated to defence in view of the significant recent decline in threats to national security. According to provisional estimates, the defence sector in 1998 consumed 52 per cent of current expenditure, while the education sector received only 12 per cent. The Special Representative notes that the 1999 budget allocations indicate an increased share for education and hopes this will indeed be disbursed. He is also of the opinion that this area should be given priority in cooperation between Cambodia and international donors.

111. The limited budget allocation for education has also been an additional handicap for children of poorer families. Although the Constitution states that education should be free for all, the costs are high. School fees, uniforms, stationery, books, transport and tutoring must all be paid for. A 1997 study showed that parents and the community bear 75 per cent of the real costs of education, with the State only contributing 13 per cent. The Special Representative welcomes the Government's commitment to increase the share of GDP allocated to education to 3 per cent by the year 2002.

112. The Special Representative has similar concerns as regards expenditures in the area of health, which remain heavily dependent on external assistance from various sources. According to UNDP figures for 1990, the least developed countries, a group which includes Cambodia, spend an average of 1.9 per cent of GDP on health. However, in 1998 the Government of Cambodia spent only 0.57 per cent of GDP on health, a reduction from the 1997 level of 0.67 per cent. The Special Representative welcomes the Government's commitment to increasing the health sector's share of GDP to 2 per cent by the year 2002. In the meantime, he urges the Government to ensure that the Ministry of Health has full and regular access to the funds allocated to it in the budget, in view of the fact that only 75 per cent of the budget allocation was made available during 1998.

113. Poverty contributes to the growing problem of children living in the street. Repressive measures are not the answer. The Special Representative has been informed about the frequent temporary detention and beating of street children by policemen. In early January COHCHR intervened with the commander of a district police station in Phnom Penh to recommend that he discipline three subordinates who had severely beaten seven boys aged 14 to 18. The boys were accused of having stolen a suitcase belonging to a policeman.

114. Children are also among the people who are illegally arrested and detained in the efforts to "clean" the streets of Phnom Penh. Hundreds of people have, without being suspected of any criminal act, been rounded up by armed law enforcement officials and detained in a holding centre under the control of the Phnom Penh municipality. In December 1998 COHCHR met with the first Deputy Governor of Phnom Penh and expressed its concerns over these illegal arrests, the absence of any legal ground for using this particular facility as a detention centre, and the living conditions in the holding centre. The first Deputy Governor assured COHCHR that the holding centre would be closed and that the practice of illegally arresting and detaining people living in the streets would cease. The holding centre was, however, still in use at the end of January.

K. Rights of ethnic minorities

115. Earlier sections of this report describe attacks against Vietnamese citizens and a general expression of anti-Vietnamese sentiment in the post-election demonstrations. The Special Representative discussed these problems and other aspects of the situation of the ethnic Vietnamese with leaders of the Vietnamese Association in October and again in January 1999. He was told that their situation had become worse during the voter registration in May 1998 when ethnic Vietnamese had been accused of illegally trying to obtain voter cards. Some of them had their identity papers confiscated by commune election committees because it was judged that they could not speak Khmer well enough.

116. Further, the Special Representative has received a report about three ethnic Vietnamese families who were stopped at the border by Cambodian authorities in October 1998 when on their way to Viet Nam. The families were told that if they went to Viet Nam, their Cambodian identification papers would be confiscated and they would not be able to return to Cambodia. One family continued on to Viet Nam and had their papers confiscated while the other two chose to remain in Cambodia. Such confiscation of national identification documents is clearly arbitrary and not supported by law.

117. The Special Representative raised these matters during his January meeting with co-Minister of the Interior Sar Kheng and suggested that the legal status of ethnic Vietnamese who had lived in Cambodia for several years be further clarified and that assistance be offered for them to obtain identity documents, when needed.

118. Ethnic Vietnamese in opposition to the Government in Hanoi have faced problems in Cambodia when they have tried to demonstrate their political opinions. The vice-president of one group, the Free Vietnamese Movement, was arrested in October 1998 together with another member. His whereabouts were

unknown at the time of writing, but it was reported that he had been warned before his arrest to stop his activities with the group. Since 1996, over 20 members of this or similar groups have been arrested and deported to Viet Nam where some of them have been imprisoned. Some of those deported had Cambodian identification documents.

119. In accordance with international law, no Cambodian citizen or non-citizen should be deported to a country where his/her life or freedom would be threatened. The right of association is a basic human right protected by Cambodian law; ethnic Vietnamese should be guaranteed the same right as others to peacefully assemble.

120. The report of Cambodia under the Convention on the Elimination of All Forms of Racial Discrimination was reviewed by the Committee on the Elimination of Racial Discrimination (CERD) in March 1998. The Committee noted Cambodia's particular difficulties and also the positive factors. However, it expressed concern about the situation of the ethnic Vietnamese and made a series of recommendations. One of them was that the Law on Nationality should be revised. The Special Representative recommends that these suggestions be studied by the Cambodian Government in consultation, if desired, with COHCHR.

L. Rights of indigenous peoples

121. In accordance with relevant international standards, indigenous peoples should enjoy the rights of access and legal title to their traditional lands; to retain use of their natural resources; to be consulted and to participate in the planning, decision-making and implementation of any development process affecting their lives and livelihood; to establish their own associations; to enjoy their own culture; to express their identity and to develop their customs and traditions; to profess and practise their own religions and to use their own languages in private and public; to have the opportunity to learn and to have instruction in their mother tongue; to have access to adequate health care and appropriate education; and to be safeguarded against discrimination and exploitation.

122. For their livelihood and subsistence the highland peoples in Cambodia depend almost entirely on their natural environment, which they use for shifting cultivation and collecting forest products. However, their customary tenure and use of these natural resources is not at present recognized in national or local land-use planning nor in corresponding land rights and ownership titles. Politically powerful persons, including military officials, are engaged in rampant land speculation and abusive exploitation of natural resources to the detriment of the interests of the highland peoples. These peoples are particularly vulnerable to such abuses due to their low literacy rates, poor command of Khmer, lack of financial means, poor knowledge of their rights and the law, and lack of access to a fair system of justice.

123. The many large logging concessions granted in Ratanakiri province in recent years must be seen also as a human rights problem. They were decided without consultation with the provincial authorities, local populations, or international and non-governmental organizations engaged in development work in the province, and without any adequate social and environmental impact

assessment studies. During his visit the Special Representative was informed by many officials, United Nations staff, development workers and local villagers of the negative impact of irresponsible logging and of abuses by concession holders and by the local authorities who are involved, including the police and the military.

124. An expert non-governmental group, Global Witness, reported in January 1999 that logging in Ratanakiri was more intense during 1998 than ever before. According to studies supported by the World Bank, all the valuable timber in Cambodia will have been cut by the year 2003, if the current harvesting practices and volumes continue. Problems already observed as a consequence of deforestation include erosion of the very fertile red volcanic soil of upland Ratanakiri, floods in 1996 and 1997, drought in 1998, loss of fish in forest streams and lowered levels of groundwater. Indeed, the effects of deforestation are being felt throughout the country with fish catches declining by about 60 per cent between 1993 and 1997. Consumption of fish accounts for about 75 per cent of the protein intake of rural Cambodians.

125. The Special Representative spoke with several highlanders who have been harassed and intimidated by military personnel when they observed illegal logging on their traditional lands. Villagers have also been used by loggers, through intimidation or bribery, to indicate the most valuable trees in their areas, which are then cut. The Special Representative was informed that leading officers of Military Region 1 have been given permits to cut and export logs, in violation of Cambodia's self-imposed logging ban of 31 December 1996. Once permits are granted they have also been used for much larger volumes than indicated.

126. The Special Representative raised the issue of logging with the Prime Minister on 21 January 1999 and was told that action was being taken to implement the ban. The Prime Minister said that military involvement in logging would end and that existing unused concessions would be reviewed. In this context, the Special Representative takes note of the Prime Minister's letter of 6 January 1999, recalling regulations already in place to control illegal logging and calling on government ministers, the military and provincial governors to ensure that these are strictly implemented. He also notes the Prime Minister's proclamation of 25 January on measures for the management of forest resources and for the stamping out of illegal logging.

127. The Special Representative welcomes the inclusion of forestry issues on the provisional agenda of the Consultative Group on Cambodia which is to meet in late February 1999. The Government should follow up and implement the key recommendations on the forestry sector that were made by World Bank-funded consultancies in 1998. Urgent steps include taking forest inventories, classifying forest lands and current land use, adopting a clear policy on minimum rules for sustainable forest management, preparing a clear and enforceable Forest Law, undertaking a thorough review of existing and new concessions, ensuring transparent land-use planning and land allocation, recognizing, supporting and protecting community forestry initiatives, taking steps to reforest degraded areas with indigenous species of trees, and establishing regulations for forest industries and the timber trade that would ensure long-term sustainable income from forest taxes and revenue-sharing.

128. In the meantime, action should also be taken to ensure that any company currently involved in logging, wood processing or timber export operations suspends its operations until it can be shown to be fully legal and in conformity with national forestry policy. In this regard, the Special Representative notes that at a conference on this subject held in February 1999 the Government resolved to review concessions and to complete the Draft Law on Forestry Management by March 1999.

129. The Special Representative also recommends to the Government to change the procedure for granting concessions, which is currently neither transparent nor in accordance with the need to promote the conservation of forests and other key natural resources. Environmental impact assessments should be completed before any concessions are granted, and there should be extensive consultation with those communities whose livelihoods may be affected.

130. Despite the Government's stated intent to crack down on illegal logging, there is a risk that it will continue as long as the perpetrators of illegal logging practices, including businessmen, members of the military and civil servants and politicians, are not brought to justice and punished. Continuous monitoring of logging operations by the Government in close cooperation with the provincial authorities, local communities and independent monitors is essential. Those engaged in monitoring should enjoy government protection. The Special Representative recommends that the neighbouring countries of Viet Nam, the Lao People's Democratic Republic and Thailand make every effort to ensure that Cambodia's logging ban is respected on their side.

131. The recommendations of the Land and Forest Resources workshop which took place in Ban Lung in November 1998 with the participation of official representatives of the five north-eastern provinces (Ratanakiri, Stung Treng, Preah Vihear, Kratie and Mondulakiri) should be seriously studied and considered by the national Government. The Special Representative welcomes the decision of the Inter-Ministerial Committee on Highland People's Development to follow up on this by sponsoring a national workshop in March 1999 on the use of land and forest resources by indigenous communities in north-eastern Cambodia. He notes with appreciation the efforts of the UNDP-supported CARERE project to promote the interests of these indigenous communities.

132. The rights of access by indigenous communities to land and the natural resources on which their livelihoods depend is under threat not only because of logging and plantations, but also from land grabbing, which takes several forms: bribes to the weakest members of a community, false promises, enticement, or simply intimidation and violence. During his visit the Special Representative met with villagers from Chet village, Sioung commune, Bokeo district. They and people from two neighbouring villages had been tricked into signing documents they could not read and which were presented to them as receipts for a gift of four tons of salt. They were later informed by the district head of police that they had signed an agreement to sell 5,000 hectares of land in exchange for the salt, and had to leave their agricultural lands, keeping only their houses and a small perimeter area. Such deceptive means were reportedly also used to "buy" agricultural land in Kok village, Kok commune, Bokeo district for much less than the real value of the land.

133. An estimated 75 per cent of the population of Ratanakiri currently consists of highland peoples. The Special Representative considers that extensive in-migration of non-highland peoples into the province would constitute a further threat to the culture and livelihood of the highland peoples, especially while issues of land ownership and allocation remained unresolved. Any plans to resettle demobilized soldiers or to install returning refugees in the province should therefore be assessed for their possible impact on the existing population.

134. In Ratanakiri province there are 2 substantial areas under national protection and 12 other protected areas, but there are no adequate means to ensure their appropriate management, monitoring and protection. Although Virachey National Park is well supported by the Ministry of Environment together with the World Wide Fund for Nature, it suffers from illegal transboundary logging and harvesting of rattan and bamboo by Vietnamese companies. This affects both the ecology of the park and the livelihood of the indigenous people living within the park. The Special Representative commends the Ministry of the Environment for protecting the continued right of some 12,000 highland people to live in the core and buffer zones of the park, where they also play a role in the management and preservation of the park. He recommends that the buffer zone of the park be added to the already formally protected core area of the park and placed under the management of the Ministry of Environment. All forms of concession and privatization should be prohibited in all areas of the park and in other protected areas.

135. Preliminary plans exist to construct major hydropower dams in the north-east of Cambodia. The news of recent feasibility studies by the Asian Development Bank and the Mekong River Commission for dams on the lower Sesan and lower Srepok rivers, which would dam those rivers at their confluence and cause flooding of river areas in Ratanakiri province, have caused concern in the province. In view of the possible impact of such projects on the indigenous communities and their natural environment, the Special Representative recommends that these plans be carefully reviewed. These and other large-scale development plans must allow for public participation in their preparation.

136. The highland cultures, languages and beliefs are in some respects clearly different from those of the lowland Khmer. This has given rise in some cases to prejudice among the majority population. The Government has an important role to play in informing the general public of the different cultures present in the country, their equal value and their importance in adding to national diversity. The Special Representative commends initiatives to codify local non-written languages and collect folk tales, music, dances and other forms of cultural expression of the highland peoples.

137. The Special Representative recommends to the Government to adopt and implement the draft national policy on highland peoples' development, submitted by the Inter-Ministerial Committee on Highland Peoples' Development to the Council of Ministers in October 1997 after a long participatory process of consultation. The draft policy provides a good framework for protecting the livelihood, identity and culture of the highland peoples.

M. Land rights

138. Land is essential for the survival of the rural poor in Cambodia, as their subsistence and livelihood are directly related to their access to and use of land. Rice farming, often supplemented only by fishing and foraging, is the only real basis for food security for many.

139. Rural Cambodians are rapidly losing their land because of the wholesale privatization of forest and wetlands that were previously common resources accessible to all. The high cost of credit, with interest rates sometimes amounting to 15-40 per cent per month, leads to indebtedness and, as a consequence, sales of land. The 1992 Land Law currently in force is a problem in itself owing to its vagueness and ambiguity. The administrative system for the registration of land lacks technical and human resources and is inefficient as a result. In land disputes poor people are disadvantaged and often victims of expropriation by force.

140. An OXFAM Land Study Project has estimated that over the last six years, no less than half of Cambodia's previously available land has become inaccessible to the rural poor and that less than 10 per cent of those occupying land have tenure, even in the weakest form. This development, along with the fact that the Cambodian population is expected to double in the next 20 years, makes it urgent that the Government develop a coherent and comprehensive national land policy. So far it is unclear how the Government intends to allocate rights and access to land and what its priorities are with regard to land use and development. Before any effective law can be drafted, the Government should establish a policy on the use, management of and right to land. To develop this policy, the Government should consult not only with all the relevant governmental branches, but also with concerned and affected groups of society.

141. The existing Land Law, written in 1992, provides an interim, partial recognition of rights to immovable property. For example, the Land Law only recognizes ownership of residential property, excluding agricultural land from private ownership. While the Law stipulates that peaceful, public and long-term possession of land in good faith could be turned into ownership, it lists additional requirements which effectively negate this recognition. Most persons possessing land in Cambodia have not so far fulfilled these requirements for various reasons - lack of information about them, inability to pay the land taxes, illiteracy problems and other difficulties with the land titling procedure. Moreover, difficulties are created by high levels of corruption and conflicts of interests with officials.

142. The Land Law also does not adequately address other issues relating to the ownership and use of property, such as mortgages and transactions secured on land, donations, contracts to sell property, methods of succession, and the land titling procedure itself. Moreover, the Land Law does not consider the differing needs and rights of indigenous peoples, many of whom express a desire for communal, rather than individual ownership rights. Neither does the Law deal with the issue of concessions, which form a major part of current land use. An additional problem is that the courts, because of the deficiencies of the Land Law, apply previous legal texts such as subdecrees from the 1980s which are not suitable today.

143. The land titling procedure is unduly burdensome and there is no cadastral register in Cambodia. The process of obtaining a title involves several administrative levels. There are currently 4 million outstanding applications for title and use of land pending with the various land title offices in Cambodia. In the past 10 years, only 10 per cent of all land title applications have been processed by these offices. In essence, the land titling procedure in Cambodia today comes down to a race: whoever records ownership first will be recognized as the legal owner of the property, regardless of whether other persons have possessed the property for a long time and therefore should be seen as the rightful owners.

144. Land disputes and evictions are common. A recent case occurred on 10 January 1999 along Route 5 in Banteay Meanchey, near the Thai border when police and soldiers forced 150 families to move out of their homes. Twenty houses were torn down at the site. The families filed a complaint with a local human rights group, claiming that they had lived on the land since 1991, had helped de-mine it, and had authorization to live there. The families also alleged that a military commander had said the land was his property

145. Another dispute caused the death of Pourng Tong, a member of the non-governmental human rights organization Association des droites de l'homme et du développement au Cambodge (ADHOC), in Kandal province on 19 December 1998. He had assisted 15 families in a land dispute with a gravel company and had helped them file a complaint in the provincial court when the company had tried to evict them. The murderer, reported to have been a bodyguard of the company, shot him in the doorway of his own home. The provincial police has started investigations but no one had been arrested at the time of writing.

146. Preliminary results of the study conducted by OXFAM indicate that in most land disputes, local authorities, including law enforcement and military authorities, are involved as parties. Provincial courts have reported that they hear as many as 30 cases of land disputes each month. A proposed draft revision of the Land Law, despite removing some of the deficiencies of the Law, does not, for instance, ensure long-time possessors of land a right to ownership. De facto possession and use for five years, maintained without violence and in good faith, publicly known and without interruption (except for fallowing) or fraud should form the only conditions for temporary possession which may lead to full ownership. It is also important for the highland peoples that communal ownership be made possible.

147. The section on concessions in the draft law is inadequate as to procedures: there is a need for transparency and to ensure that concessions are open to all sectors of society, not only to business. Proposed regulations on succession are unduly burdensome and discriminatory against surviving spouses. Also, the draft land law does not adequately protect the rights of indigenous peoples. It should be prohibited to grant any private rights, including concession rights, in national parks and similar public property.

III. IMPLEMENTATION OF RECOMMENDATIONS

148. The Special Representative has in previous reports made a series of recommendations on how the human rights situation in Cambodia might be improved. The major suggestions have been reflected in the General Assembly and Commission resolutions on Cambodia. They have concerned particular problems requiring government interventions, such as extra-judicial executions, as well as the need for legal and structural reforms to enhance the protection and promotion of human rights. The Special Representative has also raised individual cases of human rights violations.

149. Though the Government has recognized the need for major structural reforms in the field of human rights, this work has not yet come very far. Also, the investigations into recent politically related crimes have not been conducted with vigour and determination.

150. Because of this, the emphasis on human rights in the new government platform of 23 November 1998, in which the coalition stated its intention to adhere to the principle of democratic pluralism and to respect for human rights as fundamental elements for social progress, takes on particular importance. The Government stated that it would ensure and protect the freedoms of the citizen guaranteed by the Cambodian Constitution, the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Conventions on the Rights of the Child. The Government said that it strongly opposed racial hatred and that the overall structure of the State-run human rights institutions would be upgraded.

151. The government platform specifically supported freedom of the press, freedom of expression and freedom of assembly. At the same time it made the point that there was a difference between freedom and anarchy. It welcomed constructive activities and criticism by the opposition. It endorsed the multiple activities of the non-governmental organizations and stated that civil society would be a key partner of the Government in the construction of Cambodia.

152. The platform furthermore stressed the importance of the rule of law as a basic principle of democracy, the sustainability of the Government and of all institutions. A forceful legal structure was urgently needed to end assaults on human dignity. All people were born equal and no one should be above the law.

153. Ministers whom the Special Representative met in January 1999 described in greater detail how the new Government would advance the rule of law and improve the protection of human rights. It was acknowledged that an intense lawmaking effort was needed. The President of the National Assembly as well as the parliamentary Commission on Human Rights and Receipt of Complaints declared that they were awaiting government proposals and the Minister of Justice had developed a plan for the drafting of priority laws; he was also planning radical reform of the judicial system.

154. The Prime Minister promised firm measures against corruption and abuse of power at all levels, including logging. The co-Ministers of the Interior

and the governmental Cambodian Human Rights Committee were considering extensive reforms of the police. The co-Ministers of Defence reacted positively to suggestions about disciplining the military forces and intensifying human rights education for them. In the social sector, the Minister for Women's Affairs and Veterans was developing a programme to combat, inter alia, trafficking, prostitution and the spread of HIV/AIDS. The Ministry of Education wanted to increase school attendance and, at the same time, improve the quality of teaching. The Minister of Environment had the particularly delicate task of establishing a balance between the requirements of economic development and the protection of natural resources for the future, including in the interests of the indigenous peoples.

155. Implementation of these promises and plans would go a long way towards addressing the problems which the Special Representative has raised. He therefore appeals to the international community to be available as a supportive partner for this enormous challenge. Cooperation to make possible legal proceedings against those responsible for the massive human rights violations of 1975-1979 is only one, though very important, first step. Advice and concrete assistance will be required for several of the programmes listed above, notably measures to put an end to impunity. However, the main responsibility will, of course, remain with the Cambodian authorities.

IV. CONCLUDING REMARKS

156. Human rights practice depends to a large extent on attitudes among the people in power. Ordinary people do normally understand the crucial importance of having rights and ensuring that those rights are respected. Even when political leaders have thoroughly good intentions, human rights norms as expressed in the Constitution and the international conventions need to be underpinned by sound legislation, an effective and independent judiciary and a non-partisan, professional police. Monitoring by the media, opposition parties and voluntary organizations is, of course, essential.

157. This is recognized by many in Cambodia. Indeed, the discussion has moved further. The depth of the impunity problem, the proposal to establish an independent human rights commission and the decision by the Prime Minister to establish a governmental committee on human rights with branches at the local level have spurred discussion on how human rights can be integrated into government policy at all levels and at the same time be monitored by independent structures.

158. Nothing can replace an independent judiciary and an impartial police. Nevertheless, it would be valuable as a complement to develop a human rights approach in all relevant ministries of the Government. Almost all of them should have human rights on their agenda, including those which deal with economic, social and cultural matters. Focal points could be assigned within each ministry which could be coordinated through an inter-ministerial structure.

159. A similar approach could be taken to human rights issues which concern the provincial, district and commune authorities. The purpose would be to keep the human rights dimension in the foreground.

160. It is also important that there is an emphasis on human rights in the work of the National Assembly. In an ideal situation, all members would channel human rights concerns from their constituencies. The commission on human rights in the previous parliament made important contributions to a principled discussion and also developed an approach to investigating complaints from the public. The new commission in the National Assembly assured the Special Representative that it would be active in a similar spirit.

161. Coordination within the government structures should not be confused with the proposal to establish an autonomous commission or office of an ombudsperson for independent monitoring of the human rights situation, including receipt of complaints. Structures of this kind have been successfully established in some of Cambodia's neighbouring States and the time may now have come for Cambodia to start preparing for it. However, it is clear to the Special Representative that the creation of such a commission/office must be based on a law which protects its independence. Methods of appointment and funding should be designed in the same spirit. It is important that the process of establishing the commission/office is conducted in broad consultation with non-governmental organizations, political parties and other institutions, and the public so as to ensure impartiality and credibility.

162. Another important issue in the discussion about human rights structures is the role of non-governmental organizations. Cambodia is fortunate to have several energetic, competent and mature human rights groups. They do concrete development work and most of them at the same time also perform monitoring activities. As with the work of COHCHR, the combination of the two aspects is natural, and indeed they go hand in hand.

163. The Government has now stated that these groups are key partners. However, this spirit requires that the authorities do not undermine or try to co-opt the organizations, but respect them as they are. Their monitoring and reporting work should be welcomed, or at least not prevented. The unjustified arrest of two human rights workers in Sihanoukville in December 1998 was an unfortunate signal and prompted the Special Representative to suggest that the Government should publicly reassure the organizations that their work is and will be respected. The Government should also put before the National Assembly a new draft law on non-governmental organizations which would guarantee freedom of association and be supportive rather than repressive.

164. It is a good omen that such matters are being discussed in Cambodia today. Indeed, the Special Representative wishes to report that he has met with widespread commitment to human rights not only in civil society but also among many officials in the Government, the parliament and the judiciary, as well as among ordinary citizens, including in remote villages.

Annex

LETTER DATED 21 JUNE 1997 FROM THE CO-PRIME MINISTERS OF
CAMBODIA ADDRESSED TO THE UNITED NATIONS SECRETARY-GENERAL

Dear Mr. Secretary-General,

On behalf of the Cambodian Government and people, we write to you to ask for the assistance of the United Nations and the international community in bringing to justice those persons responsible for the genocide and crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979.

The April 1997 resolution on Cambodia of the United Nations Commission on Human Rights requests:

"the Secretary-General, through his Special Representative, in collaboration with the Centre for Human Rights, to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability."

Cambodia does not have the resources or expertise to conduct this very important procedure. Thus, we believe it is necessary to ask for the assistance of the United Nations. We are aware of similar efforts to respond to the genocide and crimes against humanity in Rwanda and the former Yugoslavia, and ask that similar assistance be given to Cambodia.

We believe that crimes of this magnitude are of concern to all persons in the world, as they greatly diminish respect for the most basic human right, the right to life. We hope that the United Nations and international community can assist the Cambodian people in establishing the truth about this period and bring those responsible to justice. Only in this way can this tragedy be brought to a full and final conclusion.

Please, Mr. Secretary-General, accept the assurances of our highest consideration.

(signed): Prince Norodom Ranariddh
First Prime Minister

(signed): Hun Sen
Second Prime Minister
